IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 330 OF 2006
in
S. C. Suit No. 1215 of 2006

The Mourya Samaj Charity Trust & ors. ... Appellants.
VS.
Motilal Ramdev Mourya & ors. ... Respondents

Mr. Kapil P.Shetye with Y. K. Tiwari
i/b. K. P. Towari & Co., for appellants.
Mr. Praveen L. Singh for respondents 1 to 3.

CORAM: D. G. KARNIK **J.**

DATE: 20th September 2006

P.C.:

1. Heard counsel.

2. This appeal is directed against the order dated 29th March 2006 passed by the City Civil Court, in Notice of Motion No. 1215 of 2006.

3. The appellant no.1 (hereinafter referred to as 'the trust') is a public charitable trust and appellant nos. 2 to 7 are the

trustees of the trust. At the election of the trustees of the appellant trust, the respondent nos. 1 to 3 offered themselves as candidates for the election as trustees. However, nominations of the respondents were rejected. Aggrieved respondents filed a suit, bearing Suit No. 1323 of 2006 , before the City Civil Court for a declaration that the rejection of their nomination papers was illegal, null and void and for an order directing the appellants to accept the nominations of the respondents and thereafter to continue the election process. In the said suit the respondents took out a motion, bearing Motion No. 1214 of 2006, for an injunction restraining the appellants from holding elections which were to be held on 26th March 2006. When the motion came up for hearing counsel for the appellants made a statement that as the nominations of the respondents were rejected the appellant nos. 2 to 7 were declared to have been elected unopposed and therefore there was no question of holding any election. In view of the fact that the appellant nos. 2 to 7 were declared to have been elected as trustees the motion was dismissed. The respondents did not challenge the said

order of dismissal of the motion and the order has thus become final.

4. The respondents however, took out another motion, bearing Notice of Motion No. 1215 of 2006, praying that appellant nos. 2 to 7 be restrained from taking charge as office bearers or trustees of the appellant no.1 trust. By an order dated 29th March 2006 the learned Judge of the City Civil Court allowed that motion, and restrained the appellant nos. 2 to 7 from taking oath as office bearers or trustees. That decision is impugned in this appeal.

5. By an order dated June 30, 2006 this court (Coram: A. M. Khanwilkar J.), while admitting the appeal, granted stay to the order of injunction issued by the trial court in Motion No. 1215 of 2006. Learned counsel for the appellant submitted that in view of the stay, the appellant nos. 2 to 7 have taken oath and have assumed the office of trustees. He submitted that since the injunction prayed against appellant nos. 2 to 7 was only for restraining them from taking oath the motion

has become infructuous the appeal has to be allowed. I see merit in the submission.

6. Apart from the fact that the relief of injunction has become infructuous, in my view, the appeal needs to be allowed on other grounds also. The respondents had offered themselves as candidates for the election to the post of trustees. Their nominations were however rejected. On rejection of the nominations appellant nos. 2 to 7 were declared elected unopposed. In the previous Motion No. 1214 of 2006 the respondents had challenged the rejection of their nominations and had prayed for an injunction restraining the defendant no.1 from holding election to the post of trustees. That motion was dismissed. The respondents did not challenge this order and allowed it to become final. Once that order became final the only thing that appellant nos. 2 to 7 were required to do was to take oath of office as per the constitution of the trust. They were declared elected and the taking of oath was only a corollary to their election. The election having not been stayed and not been set aside the

appellant nos. 2 to 7 cannot be prevented by an order of injunction from taking oath of office as is required by the constitution of the trust.

7. In my view, the respondents have not made out prima facie case for grant of injunction. The suit was, prima facie, not maintainable. Section 50 of the Bombay Public Trusts Act (for short 'BPT Act') requires that the person who wants to file a suit for a declaration or injunction in favour or against a public trust or trustees or beneficiaries thereof for any of the reliefs mentioned in clauses (a) to (q) of the said section has to obtain consent of the Charity Commissioner for filing of the suit. The appellants claim that they have a right to be appointed as trustees. The suit is therefore prima facie covered by clauses (b), (c) and (p) of section 50 of the BPT Act and the suit filed without the permission of the Charity Commissioner is prima facie not maintainable. For claiming the relief of injunction the plaintiff must make out a strong prima facie case including on the point of maintainability of the suit as held by the Supreme Court in Shri **Shiv Kumar**

Chadha vs. Delhi Municipal Corporation & ors., reported in (1993) 3 SCC 161.

8. The respondents have a remedy the BPT Act, 1950 itself. Section 22 of the Bombay Public Trusts Act says that where any change occurs in the trustees a change report is required to be filed before the Charity Commissioner. The Charity Commissioner then, after the enquiry, is entitled to accept or reject the change report. The appellants have already filed the change report. Respondents can oppose the change report on the ground that the elections were illegal in view of improper rejection of their nominations. For these reasons I am of the view that the impugned order is not sustainable. The impugned order is accordingly set aside and the appeal is allowed.

(D.G. KARNIK J.)